



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

**[EPA-R03-OAR-2018-0217; EPA-R03-OAR-2014-0299; EPA-R03-OAR-2016-0373;
FRL- 9984-30-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans;
West Virginia; Regional Haze Plan and Visibility Requirements for the 2010 Sulfur
Dioxide and the 2012 Fine Particulate Matter Standards**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of West Virginia (West Virginia). This SIP revision changes West Virginia's reliance on the Clean Air Interstate Rule (CAIR) to reliance on the Cross-State Air Pollution Rule (CSAPR) with the purpose of addressing certain regional haze requirements and the visibility protection requirements for the 2010 sulfur dioxide (SO₂) national ambient air quality standards (NAAQS). EPA is approving this SIP revision and consequently converting the Agency's prior limited approval/limited disapproval of West Virginia's regional haze SIP revision to a full approval and withdrawing the federal implementation plan (FIP) provisions for addressing our prior limited disapproval. Based on our full approval of West Virginia's regional haze program, EPA is also approving the portions of West Virginia's infrastructure SIP revisions for the 2010 SO₂ and 2012 fine particulate matter (PM_{2.5}) NAAQS addressing visibility protection requirements. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this rulemaking action under Docket ID Number EPA-R03-OAR-2018-0217. The following previously established dockets are also relevant to today's action: Docket ID Number EPA-R03-OAR-2014-0299; and EPA-R03-OAR-2016-0373. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the "For Further Information Contact" section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at velez-rosa.emlyn@epa.gov.

SUPPLEMENTARY INFORMATION: On September 16, 2015, the State of West Virginia via the West Virginia Department of Environmental Protection (WVDEP) submitted a revision to its SIP to update its regional haze plan and to meet the visibility protection requirement in section 110(a)(2)(D)(i)(II) of the CAA for the 2010 SO₂ NAAQS. EPA is also addressing as part of this rulemaking action two SIP revisions submitted by West Virginia on October 16, 2014 and May 12, 2017 addressing the visibility protection requirement in section 110(a)(2)(D)(i)(II) for the 2010 SO₂ and 2012 PM_{2.5} NAAQS, respectively.

I. Background

On March 23, 2012, EPA finalized a limited approval and a limited disapproval of a West Virginia SIP revision submitted on June 18, 2008 addressing regional haze program requirements.¹ The limited disapproval of this SIP revision was based upon West Virginia's reliance on CAIR as an alternative to best available retrofit technology (BART) and as a measure for reasonable progress. On June 7, 2012, EPA promulgated a FIP for West Virginia that replaced reliance on CAIR with reliance on CSAPR to meet BART and reasonable progress requirements, to address the deficiency in the State's CAIR-dependent regional haze SIP.² Consequently, this particular aspect of West Virginia's regional haze requirements was satisfied by EPA's issuance of a FIP (hereafter referred to as partial Regional Haze FIP).

On September 16, 2015, the State of West Virginia submitted a SIP revision to change its present reliance from CAIR to CSAPR for the purpose of meeting BART for regional haze and addressing reasonable progress requirements, thereby eliminating West Virginia's need for the partial Regional Haze FIP. The SIP revision was also submitted to meet the outstanding visibility protection requirement under section 110(a)(2)(D)(i)(II) of the CAA for the 2010 SO₂ NAAQS, also known as prong 4. The prong 4 requirement under the CAA requires that a state's SIP include adequate provisions prohibiting any source or other type of emissions activity in one state from interfering with measures to protect visibility required to be included in another state's overall SIP. One way in which prong 4 can be satisfied is if a state has a fully approved regional haze program within its SIP. The September 16, 2015 SIP revision amends the portion of West Virginia's October 16, 2014 infrastructure SIP submission for the 2010 SO₂ NAAQS addressing prong. On May 12, 2017, West Virginia submitted another SIP revision addressing

¹ 77 FR 16937 (March 23, 2012).

² 77 FR 33643 (June 7, 2012).

infrastructure requirements under section 110(a)(2) for the 2012 PM_{2.5} NAAQS, including prong 4 for visibility protection. The May 12, 2017 relies on the September 16, 2015 SIP revision to meet prong 4.

On June 14, 2018 (83 FR 27734), EPA published a notice of proposed rulemaking (NPR) addressing West Virginia's three SIP revisions submitted to address certain regional haze requirements and the visibility provisions of section 110(a)(2)(D)(i) of the CAA for the 2010 SO₂ and the 2012 PM_{2.5} NAAQS. In the NPR, EPA proposed to take the following actions: (1) to approve West Virginia's September 16, 2015 SIP revision that changed West Virginia's reliance on CAIR to reliance on CSAPR for certain elements of West Virginia's regional haze program; (2) to convert EPA's limited approval/limited disapproval³ of West Virginia's regional haze program to a full approval; (3) to remove the partial Regional Haze FIP for West Virginia that addressed the deficiencies associated with the Agency's prior limited disapproval; and (4) to approve portions of West Virginia's October 16, 2014 and May 12, 2017 infrastructure SIP revisions for the 2010 SO₂ and the 2012 PM_{2.5} NAAQS, respectively, addressing the visibility protection provisions of section 110(a)(2)(D)(i) of the CAA.

II. Summary of SIP Revision and EPA Analysis

The September 16, 2015 SIP revision from West Virginia corrects the deficiencies identified by EPA in the June 7, 2012 limited disapproval of West Virginia's regional haze program, by replacing reliance on CAIR with reliance on CSAPR in its regional haze SIP. Specifically, the September 16, 2015 SIP submittal changes the West Virginia regional haze program to specify that the State is relying on CSAPR in its regional haze SIP to meet the best available retrofit technology (BART) for certain electric generating units (EGUs) and reasonable progress

³ 77 FR 33642 (June 7, 2012).

requirements to support visibility improvement progress goals for West Virginia's Class I areas, Dolly Sods and Otter Creek Wilderness Areas.

As did EPA's partial Regional Haze FIP for West Virginia, the State's September 16, 2015 regional haze SIP revision relies on CSAPR to address the deficiencies identified in EPA's June 2012 limited disapproval of West Virginia's regional haze SIP. As discussed in the NPR in greater detail, EPA finds that this SIP revision satisfies West Virginia's BART requirements for its EGUs and reasonable progress requirements and therefore allows for a fully approvable regional haze program. With today's final approval, the State has a SIP in place to address all of its regional haze requirements. EPA finds that West Virginia's reliance in its SIP upon CSAPR for certain BART and reasonable progress requirements is in accordance with the CAA and regional haze rule requirements (including 40 CFR 51.308(e)(2)), as EPA has recently affirmed that CSAPR remains an appropriate alternative to source-specific BART controls for EGUs participating in CSAPR.⁴ Because the deficiencies in West Virginia's regional haze SIP associated with the State's reliance on CAIR that were identified in EPA's prior limited disapproval are addressed through West Virginia's revised SIP, the Agency is now fully approving the State's regional haze SIP.

Additionally, EPA finds that the prong 4 portions of West Virginia's infrastructure SIP revision submittals for the 2010 SO₂ NAAQS and the 2012 PM_{2.5} NAAQS, respectively, are fully approvable as West Virginia now has a fully approved regional haze SIP.⁵ The specific details

⁴ See 82 FR 45481 (September 29, 2017) (affirming the validity to EPA's determination that participation in CSAPR satisfies the criteria for an alternative to BART following changes to the program.)

⁵ West Virginia's 2010 SO₂ NAAQS and 2012 PM_{2.5} NAAQS infrastructure SIP submissions relied on the State having a fully approved regional haze program to satisfy its prong 4 requirements. However, at the time of both infrastructure SIP submittals, West Virginia did not have a fully approved regional haze program as the Agency had issued a limited disapproval of the State's regional haze plan on June 7, 2012, due to its reliance on CAIR.

of West Virginia's September 16, 2015 SIP revision and the rationale for EPA's approval of the three SIP revisions are discussed in the NPR (83 FR 27734, June 14, 2018) and will not be restated here.

EPA received a total of three comments on the June 2018 NPR. Two of those did not concern any of the specific issues raised in the NPR, nor did they address EPA's rationale for the proposed approval of West Virginia's SIP revision submittals; therefore, EPA is not responding to those comments. EPA did receive one relevant comment. That comment, and EPA's response are discussed below. All comments received are included in the docket for this rulemaking action.

III. Public Comments and EPA's Response

EPA received an anonymous comment considered to be adverse and relevant to this rulemaking action. The commenter states that EPA did not act on West Virginia's SIP revisions by the required statutory deadline of 12 months after each of the SIP revisions became complete. Commenter also asserts that by EPA not approving West Virginia's SIP revisions timely, and consequently the underlying requirements not being federally enforceable for nearly 4 years, human health and the environment have been negatively impacted. Commenter questions why EPA has taken so long to act on these SIP revisions and requests an explanation of how visibility was protected in the last 3 to 4 years when the SIP revisions were deficient and unapprovable.

Response: EPA acknowledges that it missed the statutory deadlines to take action on the three West Virginia SIP revisions addressed in this rulemaking action. However, at this time, EPA is taking final action on these SIP revisions, and by doing so it would meet all such outstanding obligations under the CAA. EPA disagrees with commenter's assertion that delayed action on

the three West Virginia SIP revisions concerning visibility protection has impacted human health and the environment. As explained in the NPR, West Virginia's regional haze requirements addressing visibility protection have been satisfied since 2012 by our limited approval of portions of West Virginia's June 18, 2008 comprehensive regional haze SIP revision and by EPA's promulgation of the partial Regional Haze FIP addressing BART for EGUs. EPA's limited approval of West Virginia's regional haze SIP and the partial Regional Haze FIP are federally enforceable and have been since 2012, and they have addressed fully West Virginia's regional haze obligations under CAA section 169A and 40 CFR 51.308. As discussed in the NPR, EPA finalized a limited approval and limited disapproval of West Virginia's June 18, 2008 SIP revision on March 23, 2012, disapproving only the portions of the SIP revision where West Virginia relied on CAIR as an alternative to BART for EGUs and as a measure for reasonable progress, since CAIR had been remanded to EPA by 2012. On June 7, 2012, EPA had promulgated partial Regional Haze FIPs for states that had relied on CAIR to replace reliance on CAIR with reliance on CSAPR for haze requirements, including West Virginia.

Thus, EPA's action on the portions of West Virginia's infrastructure SIP revisions for the 2010 SO₂ and the 2012 PM_{2.5} NAAQS addressing visibility protection (prong 4) did not have any impact on implementation of required regional haze measures, given that EPA had already limitedly approved West Virginia's regional haze SIP and promulgated the partial Regional Haze FIP for BART and regional progress purposes for EGUs.

Because West Virginia was already subject to a FIP addressing West Virginia's reliance on CAIR for certain regional haze elements, EPA's disapproval of the State's infrastructure elements for visibility protection (prong 4) under either the 2010 SO₂ or the 2012 PM_{2.5} NAAQS:

(1) would not have imposed any mandatory sanctions under section 179 of the CAA, as neither infrastructure nor regional haze SIPs are subject to CAA 179 sanctions; and (2) would not have subjected EPA to any additional FIP duties, because a FIP addressing the underlying deficiency (i.e. the partial Regional Haze FIP) was already in place. Thus, earlier action by EPA on West Virginia's prong 4 SIP revisions for the 2010 SO₂ or the 2012 PM_{2.5} NAAQS would not have further protected public health or the environment.

IV. Final Action

EPA is taking the following final actions: (1) approving West Virginia's September 16, 2015 SIP revision that changes the State's reliance on CAIR to reliance on CSAPR for certain elements of West Virginia's regional haze program; (2) converting EPA's limited approval/limited disapproval of West Virginia's regional haze program to a full approval; (3) withdrawing the partial Regional Haze FIP provisions that address the limited disapproval of West Virginia's regional haze program; and (4) approving the portions of West Virginia's October 16, 2014 infrastructure SIP revision for the 2010 SO₂ NAAQS and the May 12, 2017 infrastructure SIP revision for the 2012 PM_{2.5} NAAQS addressing the visibility provisions of CAA section 110(a)(2)(D)(i) for each NAAQS.

V. Statutory and Executive Order Reviews

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities because small entities are not subject to the requirements of this rule. 83 FR 27734 (June 14, 2018).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. There are no Indian reservation lands in West Virginia. Thus, Executive Order 13175 does not apply to this rule.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

L. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d), as it revises a FIP under CAA section 110(c).

M. Congressional Review Act (CRA)

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

N. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action, addressing West Virginia's regional haze requirements and visibility protection for the 2010 SO₂ and 2012 PM_{2.5} NAAQS and the withdrawal of the West Virginia partial Regional Haze FIP, must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur oxides, Visibility.

Authority: 42 U.S.C. 7401 et seq.

Dated: September 14, 2018.

Andrew R. Wheeler,
Acting Administrator.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX – West Virginia

2. Section 52.2520 is amended by revising the entries for “Regional Haze Plan”, “Section 110(a)(2) Infrastructure Requirements for the 2010 1-Hour Sulfur Dioxide NAAQS”, and “Section 110(a)(2) Infrastructure Requirements for the 2012 PM_{2.5} NAAQS” in the table in paragraph (e) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	*	*	
Regional Haze Plan	Statewide	9/16/15	<u>[Insert the date of publication in the Federal Register]</u> , [Insert Federal Register citation]	Converted Limited Approval/Limited Disapproval to Full Approval See §§52.2533(g) and 3/23/12, 77 FR 16937.
* * *	* * *	*	*	
Section 110(a)(2) Infrastructure Requirements for the 2010 1-Hour Sulfur Dioxide NAAQS	Statewide	6/25/13	10/16/14, 79 FR 62035 <u>[Insert the date of publication in the Federal Register]</u> , [Insert Federal Register citation]	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C) (enforcement and minor source review), (D)(i)(II) (regarding visibility protection), (D)(ii), (E)(i) and (iii), (F),

				(G), (H), (J) (consultation, public notification, and visibility protection), (K), (L), and (M).
		7/24/14	3/9/15, 80 FR 12348	Addresses CAA element 110(a)(2)(E)(ii).
		6/1/2015	8/11/2016, 81 FR 53009	Approval of PSD- related element 110(a)(2)(C), (D)(i)(II), and (J). <i>See</i> §52.2520.
		9/16/15	<u>[Insert the date of publication in the Federal Register],</u> [Insert Federal Register citation]	Addresses visibility protection element of CAA section 110(a)(2)(D)(i)(II).
* * * * *				
Section 110(a)(2) Infrastructure Requirements for the 2012 PM2.5 NAAQS	Statewide	11/17/15	5/12/17, 82 FR 22078 <u>[Insert the date of publication in the Federal Register],</u> [Insert Federal Register citation]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (regarding prevention of significant deterioration and visibility protection), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.
		9/16/15	<u>[Insert the date of publication in the Federal Register],</u> [Insert Federal Register citation]	Addresses CAA element 110(a)(2)(D)(I)(II) for visibility.

* * * * *

3. Section 52.2533 is amended by removing and reserving paragraphs (d), (e), and (f) and by adding paragraph (g).

The addition reads as follows:

§ 52.2533 Visibility protection.

* * * * *

(g) EPA converts its limited approval/limited disapproval of West Virginia's regional haze program to a full approval. This SIP revision changes West Virginia's reliance from the Clean Air Interstate Rule to the Cross-State Air Pollution Rule to meet the regional haze SIP best available retrofit technology requirements for certain sources and to meet reasonable progress requirements.

[FR Doc. 2018-20617 Filed: 9/21/2018 8:45 am; Publication Date: 9/24/2018]